

Remarks by Benjamin Cottone, General Counsel for the Federal Communications Commission, to members of the National Association of Educational Broadcasters at their annual meeting October 12, 1948.

I have been asked to convey to you the Commission's regrets that none of the Commissioners was able to be here. The entire Commission has been engaged for the past five days in an important hearing which is expected to run for several days more. But their absence should not be taken as a lack of appreciation of the importance of meetings of this kind.

I am, however, delighted to have the opportunity to be here. Your President, Mr. Hull, has suggested that I speak frankly to you about some Commission problems that concern you, and us. I welcome this suggestion, and I shall speak frankly and freely to you except on those matters which are presently awaiting decisions by the Commission. I wish first to discuss certain problems in which I know you are interested, and then give my own views about the immediate future of educational broadcasting in the light of the broad problems facing the Commission.

#### CLEAR CHANNEL HEARINGS

First, a word about the clear channel hearings. I bring this up not because I want to but because I know you expect me to. Many of you operate daytime stations on clear channels and hence have an active interest in this venerable, but yet unresolved, proceeding. I am familiar with the testimony of your representatives before the Commission itself and more recently before the Senate Committee on Interstate and Foreign Commerce which, under the resolution of Senator Johnson, inquired into this matter. As you may know, as a result of this hearing the proposed White Bill contains a provision limiting clear channel stations to 50 kw power. The Commission, in anticipation of a coming conference on a renewal of the North American Regional Broadcasting Agreement is now working up its findings and conclusions on this highly controversial issue. When this report will be issued, what it will contain and the meaning it will have for your group I unfortunately am unable to discuss at this time. It is a complex problem with both national and international considerations thoroughly intertwined.

#### SPECIAL NIGHTTIME AUTHORITY

Imagine a Yankee compelled to defend the civil rights program at a Mississippi convention of states' rights Democrats and you can, in some measure, appreciate the frame of mind in which I approach my next subject. I refer, of course, to the Commission's recent order abolishing special temporary



authorizations. Here, alas, I cannot duck behind the protective wall of "this matter is awaiting Commission decision."

Seriously, I can appreciate the reaction to this order of those of you who operate daytime AM stations. I know that for many years the STAs have on occasion been a small solace when the sun went down. I think you deserve some discussion of this action.

When the Commission decided to re-write its rule on STAs, it had been faced with a serious problem of orderly administration. As a result of the great increase in the number of daytime stations after the war, we were daily being besieged with great volumes of eleventh hour requests for authority to broadcast so-called special events programs.

Now you must bear in mind that the previous rule providing for STAs was itself merely a procedural device. It reserved to the Commission a measure of latitude to waive or disregard, if you will, some substantive rule or prohibition where good cause was shown or undue hardship to the public might otherwise result in particular cases.

But in the light of the post-war developments, the case-by-case method of sifting the meritorious from the unmeritorious requests was rapidly breaking down into a hit-or-miss proposition. It was becoming impossible to distinguish the one from the other. If you were sitting in our place, I think you too would have almost thrown up your hands in dismay.

We have never been able to develop a reasonable standard for judging the merits of particular requests for STAs nor has one ever been suggested to us. Now this may sound to you like a serious admission of the weakness or futility of the administrative process. But reflect on the fact that basically the STA itself was a method by which an exception was made to an established policy or standard. I think you will see how anomalous it was for the Commission to be granting so many exceptions to the rules that the rules themselves were becoming exceptions. You will probably say that under these circumstances, the rule limiting certain stations on clear channels to daytime operations should have been given a decent burial and revered in memory only. But if we had taken that position, we would have met ourselves coming around the corner because we were having the clear channel proceeding in which we were trying to decide whether that rule should be killed and buried.

#### TELEVISION AND EDUCATION

A word on television. The Commission as you know has presently been holding hearings on the possibilities of expansion into the 475 to 890 megacycle band. Chairman Coy in a speech last July at the University of Indiana--incidentally a thoroughly meaty speech on education and radio which I recommend that you all read--urged educators to request space in this band. I know Dick Hull, your President--has written the Commission in this respect and I understand that at this meeting you are considering what action you will take.



I think you should take particular note of the advice which the Chairman gave about television in that speech.

#### FM AND EDUCATION

Now as to FM. I would be less than frank if I told you the FM frequencies set aside for your exclusive use in the 1945 allocation plan were inviolate. They are not. The Commission, as those of you who follow our own releases and the trade press are well aware, is under enormous and daily increasing pressure to give additional space in the spectrum to many diverse services, both commercial and non-commercial. Taxicabs, power companies, newspapers, police departments, railroads, utilities, and even grave diggers are each crying to be served. Indeed, as I have already indicated, the reason the Chairman is not here today is the necessity of his presiding over a 10-day hearing at which the conflicting interests of such groups and many others are being passionately aired.

We cannot possibly fully satisfy the demands of all of those seeking frequencies, even for worthwhile purposes. Many will necessarily be disappointed. Despite the great technological advances of recent years, there are not yet enough frequencies to satisfy the demand. Under these circumstances this question naturally arises: How long before the disappointed ones will covetously eye the rich untapped veins between 88 and 92 megacycles? In large measure, that depends on you.

Most of the interests clamoring for frequencies are articulate, resourceful, and well organized. They know what they want; they know how to make a compelling and persuasive appeal. And it cannot be denied that many of their requests are clearly in the public interest. Happily, educators, though with less physical resources at their command, are still able to present a strong case for their band. No one yet denies that education is in the public interest. Unhappily, on the other hand, comparatively few educators and trustees of universities and state legislators yet seem to realize that educational radio is in the public interest. Consequently, the case for reserving frequencies does not have the force it should.

Here I wish again to refer to Chairman Coy's recent speech at Indiana University. He gave this warning: - "I must point out that radio channels are too valuable to be left in idleness. If educators fail to utilize them, they will have lost their second and perhaps last chance to own and operate radio stations."

I recall that Mr. Fly shortly before he left the Commission made a similar statement and I know Cliff Durr more recently has expressed like views.

These words are harshly realistic. They are, I realize, addressed in part to the wrong group. I should, perhaps, be making these remarks to the large number of persons in or associated with education whose shocking inertia or lack of interest in the face of a great and socially obligatory responsibility threatens to bring such a tragedy to pass. But the warnings must necessarily be addressed to you. In this field you are both the vanguard and the missionaries. You know and have demonstrated the educational value to our democracy



of this new and powerful medium. It therefore falls upon you to sell it to your laggard or comatose colleagues.

Don't think I am unaware of, or insensitive to, the heart-breaking obstacles you face in this job - or to the tremendous efforts you have made and are making to overcome them. The Commission's keen awareness of your problems can be gathered from Mr. Coy's Bloomington speech. I am, therefore, deliberately refraining from going over them.

The Commission has recently done something which may help you in the tough job of expanding educational FM. I have in mind the recently adopted rules permitting educational FM broadcasting with power of 10 watts or less. These regulations make it possible to set up a pilot plant at a nominal cost in which educational broadcasting techniques and the training of personnel may be developed. Syracuse University, as you know, has been operating with a two and a half watt FM transmitter for more than a year on an experimental license. This service, I understand, reaches approximately 13,000 students and possibly a like number of Syracuse residents. It may be installed for little more than the cost of a so-called campus or wired radio. DePauw University and three others in addition to Syracuse have already applied for construction permits for this type of operation. I hope you will encourage others quickly to follow suit.

In speaking of this low power service I emphasize the use of the word pilot plant. I am sure I am safe in saying that the Commission does not consider such doll-sized coffee pots the equivalent of a full fledged educational broadcasting system - or as in any way meeting the need it had in mind when it adopted the frequency reservation plan for non-commercial educational broadcasting. It is the Commission's hope that these low power authorizations will enable educators to give those upon whom they are dependent for funds a practical demonstration of the potential of the radio medium as a mighty instrument for defending education's horizons. In short, the Commission views them distinctly as a means and not as ends in themselves. The Commission, I am sure, would be loath to see such low power stations develop into little more than training centers for commercial broadcasting personnel.

#### FCC ATTITUDE TOWARD EDUCATION

Without blowing our horn too much, I think I can say that by and large the Commission has at the moment done about as much as it can for non-commercial educational broadcasting. Yes - the STA rule notwithstanding. We have set aside a block of most desirable frequencies for your exclusive use; we have for your benefit made an exception to our rules by authorizing low power FM broadcasting. You have been encouraged to seek a place of your own in the recesses of upstairs television. There are, I'll grant you, some further actions we might take that, I venture to say, might not be entirely displeasing to some of you. But for the most part I think you'll agree that in recent years your demands have been largely met. Where they are still pending, others are in the same boat. In this respect, at least, you haven't been discriminated against.



### WHAT EDUCATORS SHOULD DO

In brief, I think you now have the ball. It is up to you to call the running plays. Within your own bailiwicks you have done exemplary jobs. You have demonstrated clearly the vital force radio as an instrument for education can play in a nation that cries for education and unbiased information. But I wonder whether you have sufficiently paraded your examples of what can be done with this instrument before the great majority of schools and universities that appear blind to its potentialities.

I also wonder whether you have fully explored Congressional avenues to determine what help, if any, can be there given the development of educational broadcasting. The Congress has from time to time by its actions expressed great interest not only in education but in educational broadcasting as well. In fact, its concern was such that it wrote into the Communications Act of 1934 as amended a provision instructing the Commission to "study the proposal that Congress by statute allocate fixed percentages of radio broadcasting facilities to particular types or kinds of non-profit radio programs or to persons identified with particular types or kinds of non-profit activities." I refer to this provision not to recall to you the, to my mind, not altogether happy results of the Commission's study under this mandate, but to stress again Congress's concern with your problems.

### WHERE EDUCATORS FAIL

I wonder further how much attention you have paid to such bodies as the President's Commission on Higher Education. I believe I am correct in stating that certain members of this Commission are also presidents of universities represented in your membership. It is unfortunate that a recent report of this Commission, strikingly setting forth the alarming and growing educational bottlenecks in our country, as well as the shocking number of our citizens to whom adequate educational facilities are not yet available, made only passing reference to the use of radio in education.

In conclusion, I wish to assure you that the Commission will continue to try to assist you in both small and large ways. We stand ready with engineering and legal personnel to help any legitimate educational organization, not only in acquainting them with our requirements and procedures but in helping them with the necessarily detailed job of preparing their applications. I hope you in turn will frequently call upon us, the staff as well as the Commission, and to keep us informed of what you are doing. I look forward to the day when a representative of the NAEB can be reached as easily in Washington as a representative of the NAB.

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